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BREMERTON OFFICE

August 26, 2020

VIA ECF

Honorable Loretta A. Preska
U.S. District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *United States v. Steven Donziger*, No. 19-CR-561 (LAP); 11-CIV-691 (LAK)

Dear Judge Preska:

This is our reply to Dkt. 142 regarding our request for a trial continuance.

I don't wish to belabor the points we made in Dkts. 130 and 132, so I will keep this brief.

Significantly, the prosecution completely fails to address the conflict the September 9th trial date creates between Mr. Donziger and his counsel.

While the prosecution has pointed to a handful of cases that have gone to trial since the start of the pandemic, or may go to trial in the near future, the prosecution cites only one federal trial that actually took place, United States v. Haas, <https://www.courtlistener.com/docket/15770209/united-states-v-haas/>. We know nothing about the circumstances of the other cases, but we know Haas involved a mentally-unstable defendant, who had been held in pre-trial detention for over a year, and was tried and convicted after a two-day trial, for making multiple anti-semitic threats against federal agents. To discuss Haas is to distinguish it from Donziger. The former made terroristic threats against federal agents; the latter allegedly committed six non-violent misdemeanors. The former was held in jail; the latter in home confinement. The former represented himself; the latter has a far-flung legal team. The former apparently raised no objection to the trial; the latter has.

For all of the prosecution's reference to media articles describing a small number of trials that have been undertaken (without any discussion of what exigencies propelled them), nothing obscures the fact that this will be the first trial held in the Southern District of New York since the pandemic began. It will involve multiple witnesses, attorneys, and spectators from around the world. The question is not whether this can be done while



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adhering to Constitutional standards, as that remains an unknown. The question is: Why should it be held in the midst of a pandemic? We do know that there are risks involved for the participants in the trial of this case at this time. The prosecution has still failed to identify any public policy that justifies taking these risks or making the Constitutional compromises it proposes. Only Mr. Donziger will be hurt by a continuance.

In its first footnote the prosecution cites statistics that show 772,380 security screenings by TSA on August 20th. This footnote purports to support the statement that “hundreds of thousands of people are safely flying through U.S. airports every day... without being infected by COVID-19.” But the statistics says nothing about how many of those people have COVID-19 or are contracting it while flying. The statistics we submitted from Barbados, where passengers from the U.S. are actually being tested, suggest that flying is not at all safe. As noted in our earlier letter, Dr. Fauci seems to agree.

The prosecution correctly points out that I traveled twice to Mexico since the pandemic began. Both trips were to Southern Baja and were required due to a set of emergencies involving a property my wife and I own there. At the time, my understanding was that there had been only one or two reported COVID cases in Southern Baja, and none in the town we traveled to. Importantly, this was before I was ill with cellulitis and shingles. I am happy to provide more details about these two trips—my only travel since the pandemic—or my health condition if that would aid the Court.

Again, Mr. Donziger is in home detention. He is the only person possibly hurt by delay, but there are many who could be hurt by pushing forward on September 9th.

Sincerely,

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Richard H. Friedman